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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 STEVEN PAUL KOZOL,

8 Plaintiff,

9 v.

10 CLINT MAY, CORYDON WHALEY,
11 RYAN GRAVES, KERRI McTARSNEY,
12 and DENNIS DAHNE,

13 Defendants.

No. C11-5209 BHS/KLS

REPORT AND RECOMMENDATION
Noted For: September 30, 2011

14 On August 16, 2011, Plaintiff filed a Motion to Dismiss Without Prejudice, pursuant to
15 Fed. R. Civ. P. 41(a)(2). ECF No. 22. On August 26, 2011, Plaintiff filed an Amended Motion
16 to Dismiss With Prejudice. ECF No. 23. Defendants filed a response requesting that the Court
17 grant Plaintiff's amended motion to dismiss. ECF No. 24. The undersigned recommends that
18 this action be dismissed with prejudice.

19 **BACKGROUND**

20 On March 31, 2011, Plaintiff was granted leave to proceed *in forma pauperis* and the
21 Court directed service of his complaint. ECF Nos. 6, 7 and 8. On May 26, 2011, Defendants
22 Dennis Dahne, Ryan Graves, Clint May, Kerri McTarsney, and Corydon Whaley filed their
23 answer to the complaint. ECF No. 18. On May 31, 2011, the Court entered a Pretrial
24 Scheduling Order. ECF No. 19. On August 11 and 12, 2011, Plaintiff filed motions to
25 supplement his complaint and for release of a typewriter. ECF Nos. 20 and 21. Those motions
26 are pending. As noted above, Plaintiff's motions to dismiss were filed on August 16, 2011 and

1 August 26, 2011. In the latter motion, Plaintiff asks that his claims be dismissed with prejudice.
2 ECF No. 23.

3 **DISCUSSION**

4 Under Rule 41(a)(1), a plaintiff may dismiss an action without court order either by filing
5 a notice of dismissal before the opposing party serves either an answer or a motion for summary
6 judgment; or a stipulation of dismissal is signed by all parties who have appeared. Fed. R. Civ.
7 P. 41(a)(1). Rule 41(a)(2) provides, in pertinent part:
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9 Except as provided in Rule 41(a)(1), an action may be dismissed at the
10 plaintiff's request only by court order, on terms that the court considers proper. If
11 a defendant has pleaded a counterclaim before being served with the plaintiff's
12 motion to dismiss, the action may be dismissed over the defendant's objection
13 only if the counterclaim can remain pending for independent adjudication. Unless
14 the order states otherwise, a dismissal under this paragraph (2) is without
15 prejudice.

16 Fed.R.Civ. P. 41(a)(2).

17 Defendants have answered Plaintiff's complaint, but did not plead a counterclaim. They
18 are not opposed to a dismissal with prejudice. Accordingly, the undersigned recommends that
19 the Court dismiss this action with prejudice.

20 **CONCLUSION**

21 The Court should dismiss this action with prejudice. Defendants' motions (ECF No. 20
22 and 21) should be denied as moot.

23 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure
24 (Fed. R. Civ. P.), the parties shall have fourteen (14) days from service of this Report and
25 Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections
26 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140

1 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the
2 matter for consideration on **September 30, 2011**, as noted in the caption.

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4 **DATED** this 12th day of September, 2011.

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7 Karen L. Strombom
8 United States Magistrate Judge
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